IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6373 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDIAN OIL CORPORATION LTD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6373 of 2004

MR MIHIR JOSHI with MS AMRITA M THAKORE for Petitioner No. 1

MR SIRAJ GORI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 27/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Mr Siraj Gori, learned AGP waives service of Rule for the respondent-authorities.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. Looking to the subject matter of this petition, it appears that there are two separate causes of action for which this petition is filed. On the one hand, the petitioner is challenging the orders of provisional assessment and demand notice dated 20.5.2004 for the years 2000-01 and 2001-02 at Annexure "L Colly.", and on the other hand, the notice initiating the revisional proceedings for the year 1999-2000 at Annexure "H". This petition is, therefore, treated as confined to the challenge to the orders of provisional assessment and demand notice dated 20.5.2004 for the years 2000-01 and 2001-02 at Annexure "L Colly." and the petitioner shall file a separate petition for challenging the notice initiating revisional proceedings for the year 1999-2000 at Annexure "H".

3. Having heard the learned counsel for the parties for some time and also having regard to the fact that the petitioner is a Government Company with substantial assets within the State of Gujarat, in the facts and circumstances of the case, if the controversy giving rise to the impugned orders can be examined in the course of regular assessment, there would be no justification for making provisional assessment and for coercive recovery on that basis.

On this ground alone, we are inclined to set aside the impugned orders at Annexure "L Colly." and Mr Gori, learned AGP for the respondent-authorities also submits that detailed reasons may not be given as the respondent-authorities propose to take up the issue in the course of regular assessment for the years 2000-01 and 2001-02.

4. At this stage, Mr Mihir Joshi, learned counsel for the petitioner submits that the controversy sought to be raised by the respondent-authorities is essentially based on the data supplied or being supplied by IPCL regarding Naphtha Return Stream (NRS) and, therefore, the petitioner will be handicapped if such information obtained by the respondent-authorities from IPCL is not made available to the petitioner. In the facts and circumstances of the case, we are of the view that there is considerable substance in the submission being made by Mr Joshi for the petitioner.

5. Mr Joshi has also sought to raise certain other contentions about liability of the IPCL for actual payment of sales-tax.

It would be open to the petitioner to raise all contentions available to it before the respondent-authorities. We are not inclined to examine any such contention because in the first place we are quashing the orders for provisional assessment and secondly because IPCL is not a party to this petition.

6. The petition is accordingly allowed. The impugned orders of the provisional assessment and demand notice dated 20.5.2004 for the years 2000-01 and 2001-02 at Annexure "L Colly." are quashed and set aside.

While disposing of this petition in the aforesaid terms, we also direct that the respondent-authorities shall furnish to the petitioner all such relevant material as has been made available or will be made available by the IPCL to the respondent-authorities in relation to the Naphtha Return Stream (NRS).

7. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. SHAH, J.)

(D.A. MEHTA, J.)
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